

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE**

STATE OF MAINE, *et al.*,

Plaintiffs,

v.

SCOTT PRUITT,
Administrator, U.S. Environmental
Protection Agency, *et al.*,

Defendants.

Civil Action No. 1:14-cv-264-JDL

**EPA’S STATUS REPORT AND MOTION FOR AN ADDITIONAL STAY OF
PROCEEDINGS AND INCORPORATED MEMORANDUM OF LAW**

On May 5, 2017, Defendants Scott Pruitt, in his official capacity as Administrator of the United States Environmental Protection Agency, and Deborah A. Szaro, in her official capacity as Acting Regional Administrator of Region I of the United States Environmental Protection Agency (collectively “EPA”), filed a motion for a 90-day stay of proceedings in order to determine whether it should reconsider the decisions challenged in this case in light of the two administrative petitions requesting that it do so, and in consideration of the change in Administrations. The Houlton Band of Maliseet Indians and Penobscot Nation opposed the motion. Dkt. 98. On May 12, 2017, the Court granted EPA’s motion for 90-day stay. On May 25, 2017, the Docket was updated to require that a status report be filed on or before August 10, 2017, which is the end of the existing 90-day stay. EPA respectfully submits this Status Report and Motion for Additional Stay of Proceedings.

EPA has determined that it will reconsider the decisions challenged in this case but it has not determined the outcome of such reconsideration. Specifically, EPA has not yet determined

which, if any, challenged EPA decision regarding Maine's water quality standards will be withdrawn or otherwise changed as a result of its reconsideration of those decisions. The underlying decisions are complex and EPA reasonably needs additional time to reconsider the challenged decisions. EPA currently anticipates that it will complete its reconsideration of the challenged decisions within 120 days. At the end of this time period, EPA will inform the Court and the parties of the result of EPA's reconsideration. Specifically, EPA will decide and report on which, if any, of the challenged decisions EPA intends to change. If EPA determines to change any of the challenged decisions, it may need additional time beyond the requested 120-day stay to effectuate such a change. Therefore, EPA respectfully requests that the proceedings be held in abeyance for an additional 120 days. EPA further requests that it be allowed to seek such relief as is appropriate based upon the result of EPA's reconsideration at the conclusion of the requested stay.

As EPA discussed in its initial motion for a stay, federal agencies have inherent authority to reconsider past decisions and to revise, replace, or repeal a decision to the extent permitted by law and supported by reasoned explanation. *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009); *Motor Vehicle Mfrs. Ass'n v. State Farm Mutual Auto. Ins. Co.*, 463 U.S. 29, 42 (1983). EPA's interpretations of statutes it administers are not "carved in stone" but must be evaluated "on a continuing basis," for example, "in response to . . . a change in administrations." *Nat'l Cable & Telecomm. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 981 (2005) (internal quotation marks and citations omitted). *See also Nat'l Ass'n of Home Builders v. EPA*, 682 F.3d 1032, 1038 & 1043 (D.C. Cir. 2012) (a revised rulemaking based "on a reevaluation of which policy would be better in light of the facts" is "well within an agency's discretion," and "[a] change in administration brought about by the people casting their votes is a perfectly reasonable

basis for an executive agency's reappraisal of the costs and benefits of its programs and regulations'" (quoting *State Farm*, 463 U.S. at 59 (Rehnquist, J., concurring in part and dissenting in part)).

If EPA determines to change any or all of the challenged decisions, this could moot this case entirely, or narrow the issues that would need to be briefed and decided. Alternatively, if EPA determines not to change any of the challenged decisions, then the briefing schedule can resume and the parties can brief the issues confident that EPA will not withdraw the challenged decisions. An additional brief stay will therefore serve the interest of judicial economy and also save the parties from expending their resources in briefing issues flowing from EPA decisions that might ultimately be withdrawn or revised if EPA determines to change those decisions.

Counsel for EPA has coordinated this motion with counsel for Plaintiffs and each Tribal Defendant. The State of Maine does not oppose this motion. The Houlton Band of Maliseet Indians and the Penobscot Nation may oppose this motion within the time frame provided by the local rules.

The parties understand that the briefing schedule remains in abeyance while the Court considers this motion. In the event the Court were to deny this motion, the parties would want the opportunity to propose a new briefing schedule before any party's merits motion and brief would be due to be filed.

For all these reasons, the Court should grant this motion and hold these cases in abeyance for an additional 120 days in order to provide time for EPA to reconsider the challenged decisions and determine whether it intends to change any of the decisions at issue in this case.

Respectfully submitted,

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Date: August 10, 2017

CERTIFICATE OF SERVICE

It is hereby certified that all counsel of record who have consented to electronic service are being served with a copy of the foregoing EPA's Status Report and Motion for an Additional Stay of Proceedings and Incorporated Memorandum of Law on this 10th day of August 2017.

Any other counsel of record will be served by first class U.S. mail.

s/David A. Carson